



An  
Bord  
Pleanála

**Board Direction**  
**ABP-315532-23**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 30/01/2024.

The Board decided, as follows:

**WHEREAS** a question has arisen as to whether the construction of an agricultural shed (194.5 square metres) with access roadway and land improvement works that involve importing 9000 cubic metres of topsoil and subsoil (stated to be imported from building sites) over a two year period used to raise the site by up to 500 millimetres and all associated services at Cloghaun, Claregalway, County Galway is or is not development or is or is not exempted development:

**AND WHEREAS** Homefarm Dairies care of PHE Engineering and Architecture of Unit 6 Galway Technology Park, Parkmore, County Galway requested a declaration on the said question from Galway County Council and the Council issued a declaration on the 8<sup>th</sup> day of December, 2022 stating that the said matter is development and is not exempted development:

**AND WHEREAS** Homefarm Dairies referred the declaration for review to An Bord Pleanála on the 11<sup>th</sup> day of January, 2023:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

(a) section 2(1) of the Planning and Development Act, 2000, as amended,

- (b) section 3(1) of the Planning and Development Act, 2000,
- (c) section 4 of the Planning and Development Act, 2000, as amended,
- (d) section 177(U) of the Planning and Development Act 2000, as amended,
- (e) articles 6, 8C, and 9 of the Planning and Development Regulations, 2001, as amended, and
- (f) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The new agricultural shed structure would constitute 'works' and 'development' as defined in sections 2(1) and 3(1), respectively, of the Planning and Development Act 2000, as amended.
- (b) As the intended agricultural structure, as measured on the submitted site layout plan, would be sited closer than 100 metres of the closest house, where there is no evidence that it is the house of the person providing the agricultural shed structure and where the consent of either the owner or occupier or person in charge thereof has not been provided, this element of the development set out in the referral question does not come within the Condition and Limitation 6 of Class 6 of Part 3 of Schedule 2 to article 6 of the Planning and Development Regulations 2001, as amended, and therefore, the proposed agricultural shed is not exempted development,
- (c) No evidence has been provided in relation to effluent storage facilities being adequate and therefore, it cannot be ascertained that Condition and

Limitation 3 of Class 6 of Part 3 of Schedule 2 to article 6 of the Planning and Development Regulations 2001, as amended is met and therefore, the new agricultural shed is not exempted development,

- (d) The works comprising infilling of land, by importing material (stated to be topsoil and subsoil from building sites) does not include any evidence that the material is not a 'waste' and is, therefore, presumed as comprising a waste and the importation of a waste material does not come within the meaning of the term 'land reclamation', as set out in article 8C of Part 2 of the Planning and Development Regulations, 2001, as amended, and therefore, the importation of soils and stone material from building sites as described does not constitute exempted development.
- (e) As the possibility exists that the construction of the stated proposed land improvements through importation of material (stated to be topsoil and subsoils from building sites and hereby presumed to be waste) to the site may lead to a loss of water quality in the Lough Corrib Special Area of Conservation and Special Protection Area, under the precautionary principle, appropriate assessment cannot be excluded, and therefore, under section 4(4) of the Planning and Development Act 2000, as amended, these improvements are not exempted development for this reason also.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that a proposed new agricultural shed (194.5 square metres) with access roadway and land improvements that involve importing 9000 cubic metres of topsoil and subsoil (stated to be imported from building sites) over a two year period used to raise the site by up to 500 millimetres and all associated services at Cloghaun, Claregalway, County Galway is development and is not exempted development.



Board Member: Patricia Calleary Date: 31/01/2024  
Patricia Calleary